

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Michael Gonidakis, <i>et al.</i> ,	:	
	:	Case No. 2:22-cv-773
Plaintiffs,	:	
	:	
v.	:	Chief Judge Algenon Marbley
	:	
Frank LaRose,	:	Magistrate Judge Elizabeth Deavers
	:	
Defendant.	:	Three-Judge Panel Requested
	:	

**GONIDAKIS PLAINTIFFS' EMERGENCY MOTION FOR LEAVE
TO FILE FIRST SUPPLEMENTAL COMPLAINT**

Now come Plaintiffs Michael Gonidakis, Mary Parker, Margaret Conditt, Beth Vanderkooi, Linda Smith, Delbert Duduit, Thomas W. Kidd Jr., and Ducia Hamm ("Plaintiffs"), by and through the undersigned counsel, and move this Court for leave to supplement their First Supplemental Complaint under Fed. R. Civ. P. 15(d) because the Ohio Supreme Court rejected the Third Plan passed by the Ohio Redistricting Commission, threatening the work of the Secretary of State to carry out elections. A Memorandum in Support of this Motion is attached.

Isaac Wiles & Burkholder LLC

/s/ Donald C. Brey

Donald C. Brey (0021965)

Brian M. Zets (0066544)

Matthew R. Aumann (0093612)

Ryan C. Spitzer (0093515)

Trista Turley (0093939)

Two Miranova Place, Suite 700

Columbus, Ohio 43215

Tel: 614-221-2121; Fax: 614-365-9516

dbrey@isaacwiles.com

bzets@isaacwiles.com

maumann@isaacwiles.com
rspitzer@isaacwiles.com
tturley@isaacwiles.com

*Attorneys for Plaintiffs Michael Gonidakis,
Mary Parker, Margaret Conditt, Beth
Vanderkooi, Linda Smith, Delbert Dudit,
Thomas W. Kidd, Jr., and Ducia Hamm*

MEMORANDUM IN SUPPORT

This Court recognized the evolving nature of this case on March 14, 2022. Therefore, this Court should allow Plaintiffs to supplement their complaint to capture the latest events.

I. BACKGROUND

A. Ohio's 2010 legislative district maps and Ohio's population changes.

Ohio's 2010 legislative district maps were created after receipt of the 2010 U.S. Census data showing that Ohio had a population of 11,536,504 people. The 2020 U.S. Census data showed that much has changed in Ohio over the last ten years, including a net gain of more than 250,000 people and double-digit growth in several regions. (ECF No. 8, First Amended Complaint, ¶ 1). Many political subdivisions such as Franklin, Delaware, Warren, and Union Counties grew by double-digits. (*Id.*, ¶ 33). Franklin, Cuyahoga, and Hamilton Counties, Ohio's most populous counties, saw a total shift of more than 200,000 people. (*Id.*, ¶ 34).

B. The Redistricting Commission adopts First Plan and Second Plan, and both are rejected by the Ohio Supreme Court.

The Ohio Redistricting Commission was created in 2015 by an amendment to the Ohio Constitution. The Redistricting Commission creates statewide legislative districting using the most recent federal census data. The Redistricting Commission met and adopted the First Plan in September 2021. (ECF No. 8-1, First Amend. Compl., Exhibit A). It was later sent back to the Redistricting Commission by the Ohio Supreme Court in January 2022. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-65, ¶ 138.

The Redistricting Commission then met and adopted the Second Plan on January 22, 2022. The Second Plan also used the most recent federal census data. (ECF No. 8-2, First Amend. Compl., Exhibit B). Still, in February 2022, the Ohio Supreme Court sustained objections relating

to the Redistricting Commission's Second Plan. *See League of Women Voters of Ohio v. Ohio Redistricting Comm.*, 2022-Ohio-342, ¶ 67.

C. The adoption of the Third Plan and the Ohio Supreme Court's recent rejection.

As this Court acknowledged at the March 14, 2022 Local Rule 65.1 conference, much has changed since Plaintiffs filed their complaint. (*See* ECF Nos. 1, 8). The Redistricting Commission adopted a Third Plan. (*See* Proposed First Supplemental Complaint, Exhibit 1). That Third Plan also adjusts the state legislative districts to comply with Ohio's population. This Third Plan was adopted on February 24, and filed with the Ohio Supreme Court on February 25. Objections were filed shortly thereafter. The Ohio Supreme Court invalidated the Third Plan on March 16, 2022. However, the Secretary of State has indicated that it is too late to move on from the Third Plan and still have a primary election on May 3. (*See* ECF No. 71, PageID # 1040). The Ohio Supreme Court's ruling threatens stopping the implementation of the Third Plan. Plaintiffs proposed First Supplemental Complaint alleges these new facts.

II. STANDARD OF REVIEW

Under Fed. R. Civ. P. 15(d), on motion and reasonable notice, this Court may permit a party to serve a "supplemental pleading" setting out "any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." The standard for granting or denying leave to supplement are the same as under Rule 15(a), meaning that leave should be freely given as justice so requires. *Scotts Co., LLC v. Cent. Garden & Pet Co.*, No. 2:19-cv-2185, 2021 U.S. Dist. LEXIS 80810, at *5 (S.D. Ohio Apr. 22, 2021) (Vascura, M.J.) (citing Fed. R. Civ. P. 15(a)); *see also Target Corp. v. Seaman Corp.*, No. 5:18-cv-2783, 2020 U.S. Dist. LEXIS 259323, at *17 (N.D. Ohio July 27, 2020).

III. ANALYSIS

Because this Court found during the March 14, 2022 Local Rule 65.1 conference that there are new relevant facts, this Court should grant Plaintiffs' motion for leave. Since Plaintiffs' Complaint and First Amended Complaint were filed (ECF Nos. 1, 8), much has happened in Ohio's election process.

Plaintiffs brought their claims after the Redistricting Commission had reached an impasse. (ECF No. 8, ¶¶ 54–58). But as outlined in Plaintiffs' proposed First Supplemental Complaint, the impasse broke and a Third Plan was adopted.). There were objections filed with the Ohio Supreme Court concerning the Third Plan. While those objections were pending, Secretary LaRose began implementing the Third Plan. Secretary LaRose, as the direction of this Court, provided a “drop dead” date for the statewide legislative districts to be solidified. (ECF No. 71). The Secretary of State indicated that it too late to change course from the Third Plan and still have a May 3 primary. (*Id.*, PageID # 1040). Nonetheless, the Ohio Supreme Court just invalidated the Third Plan. This could threaten the status quo of implementing the Third Plan.

This Court recognized many of these post-Complaint facts on March 14, 2022, and expressly considered them in staying the proceedings. Therefore, this Court should freely allow Plaintiffs to supplement their Complaint to conform with these facts, as well as the most recent Ohio Supreme Court decision.

IV. CONCLUSION

For all these reasons, Plaintiffs respectfully request that this Court grant leave for Plaintiffs to file the First Supplemental Complaint attached hereto as Exhibit 1, and direct the Clerk to file same on the docket.

Respectfully submitted,

Isaac Wiles & Burkholder LLC

/s/ Donald C. Brey

Donald C. Brey (0021965)

Brian M. Zets (0066544)

Matthew R. Aumann (0093612)

Ryan C. Spitzer (0093515)

Trista Turley (0093939)

Two Miranova Place, Suite 700

Columbus, Ohio 43215

Tel: 614-221-2121; Fax: 614-365-9516

dbrey@isaacwiles.com

bzets@isaacwiles.com

maumann@isaacwiles.com

rspitzer@isaacwiles.com

tturley@isaacwiles.com

*Attorneys for Plaintiffs Michael Gonidakis,
Mary Parker, Margaret Conditt, Beth
Vanderkooi, Linda Smith, Delbert Dudit,
Thomas W. Kidd, Jr., and Ducia Hamm*

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2022, a copy of the foregoing was filed electronically.

Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Parties may access this filing through the Court's system.

/s/Donald C. Brey

Donald C. Brey (0021965)